



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2022-0219; FRL-9911-02-R4]

Air Plan Approval; Mississippi; Revision of Excess Emissions Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the Mississippi Department of Environmental Quality (MDEQ) on November 17, 2016, on behalf of the State of Mississippi. The revision was submitted in response to EPA's SIP Call published on June 12, 2015, concerning excess emissions during startup, shutdown, and malfunction (SSM) events. EPA is approving the SIP revision and finds that such SIP revision corrects the deficiencies identified in the June 12, 2015, SIP Call.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2022-0219. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia

30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: D. Brad Akers, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Mr. Akers can be reached via electronic mail at akers.brad@epa.gov or via telephone at (404) 562-9089.

SUPPLEMENTARY INFORMATION:

I. Background

On June 7, 2022, EPA proposed to approve MDEQ's November 17, 2016, SIP revision. *See* 87 FR 34609. In that notice of proposed rulemaking (NPRM), EPA also proposed to determine that the SIP revision corrects the deficiency with respect to Mississippi that the Agency identified in the June 12, 2015, action titled "State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction" ("2015 SSM SIP Action"). *See* 80 FR 33839 (June 12, 2015). The reasons for the proposed approval and determination are stated in the proposed action (87 FR 34609, June 7, 2022) and will not be restated here. The public comment period for EPA's proposed approval and determination ended on July 7, 2022. EPA received one set of comments in a joint letter submitted by the Sierra Club and the Environmental Integrity Project (hereinafter collectively referred to as the commenter) on this date. The comments are available in the docket for this action.

II. Response to Comments

EPA will not address the comments that express support for the proposed action. Instead, this section of the rulemaking will focus on the portions of the July 7, 2022, letter which did not support the proposed action or which called on EPA to provide advice to the State.

a. Rule 1.10.B(1) is Not Approvable

Comment 1: The commenter asserts that Rule 1.10.B(1) is not fully approvable as included in the November 17, 2016, submittal. Specifically, the commenter states that as a standalone provision, paragraph B(1) could be read to impermissibly exempt sources from otherwise applicable SIP emission limits. Paragraph B(1) states, “Startups and shutdowns are part of normal source operation. Emission limitations apply during startups and shutdowns unless source-specific emission limitations or work practice standards for startups and shutdowns are defined by an applicable rule, regulation, or permit.” The commenter goes on to note EPA’s past comments on the proposed changes to Rule 1.10.B in 2016 during prehearing review, which stated that EPA was “concerned that this provision appears to provide that an ‘applicable rule, regulation, or permit’ that is not approved into the SIP might contain limitations that apply during startups and shutdowns *in lieu of an applicable SIP limit*” (emphasis in original).

The commenter points to EPA’s analysis in the June 7, 2022, NPRM which states that Rule 1.10.B(1) and B(2) “taken together” sufficiently address the finding of substantial inadequacy in the final 2015 SSM SIP Action, and argues that to ensure Rule 1.10.B(1) is administered correctly, EPA should conditionally approve the SIP revision pursuant to Clean Air Act (CAA) section 110(k)(4), requiring Mississippi to submit, within one year of the effective date of the final conditional approval, a corrective SIP revision. According to the commenter, the corrective revision should either remove Rule 1.10.B(1) or replace the phrase “defined by an applicable rule, regulation, or permit” with “defined by an applicable SIP provision or permit as provided in section 1.10.B(2)(d) below.”

Response 1: EPA disagrees that Rule 1.10.B(1) is not approvable as transmitted in the November 17, 2016, SIP submittal. As MDEQ notes in its SIP revision responding to EPA’s

September 16, 2016, comment letter, the regulatory language must be read in conjunction with other air program regulations.¹ Specifically, the language at Rule 1.10.B(1) correctly acknowledges that “source specific emission limitations or work practice standards for startups and shutdowns” may be established in applicable rules, regulations, or permits. First, MDEQ has the ability to establish emission limitations via new or revised regulatory requirements at 11 MAC, Part 2, Chapter 1, *Air Emission Regulations for the Prevention, Abatement, and Control of Air Contaminants*, or Chapter 11, *Regulations for Ambient Air Quality Nonattainment Areas*, where MDEQ could consider whether any specific alternative emission limitations (AELs) would be justifiable for startups and/or shutdowns.

Next, MDEQ has the ability to establish emission limits in permits pursuant to its program at 11 MAC, Part 2, Chapter 2, *Permit Regulations for the Construction and/or Operation of Air Emissions Equipment*, where MDEQ could consider establishing specific AELs for startups and/or shutdowns. Pursuant to Rule 1.10.B(2), alternatives to existing SIP emission limits in any such permits are not effective until MDEQ adopts the alternatives into Rule 1.10.B, MDEQ submits them to EPA for approval and inclusion in the SIP, and EPA approves them into the SIP.

Other possible sources of an “applicable rule [or] regulation” are the New Source Performance Standards (NSPS) at 40 CFR part 60 and the National Emissions Standards for Hazardous Air Pollutants (NESHAP) at 40 CFR part 63,² which MDEQ incorporates by reference at 11 MAC, Part 2, Chapter 1, Rule 1.6, *New Sources*, at 1.6.C and Rule 1.8, *Provisions for Hazardous Air Pollutants*, at 1.8.A, respectively. Several of the NSPS and NESHAP include AELs that “impose different numerical levels during different modes of source operation or impose emission limitations that are composed of a combination of a numerical limitation during some modes of operation and a specific technological control requirement or

¹ MDEQ’s response to EPA’s September 16, 2016, comment letter on the prehearing version of the regulatory changes is part of the November 17, 2016, SIP submittal available in the docket for this action.

² The NESHAP are found at 40 CFR parts 61 and 63, with NESHAP promulgated after 1990 found at part 63.

work practice requirement during other modes of operation” such as startup and shutdown. *See* 80 FR 33839, 33889 (June 12, 2015). Rule 1.10.B(1) accurately acknowledges that as to applicable emission limits in general, the limits will apply during startup and shutdown periods unless some applicable rule, regulation or permit specifies different requirements for those periods. EPA interprets this to mean that those other limits cannot replace or relax the SIP emission limit without EPA approval via a SIP revision that meets CAA requirements.

Our interpretation stems from MDEQ’s assertion in its SIP revision that the ability to establish AELs during startups and shutdowns does not mean that alternatives to any SIP emission limits can be established via the rules, regulations, or permit requirements without a SIP revision. In response to EPA’s comment letter, MDEQ revised its Rule 1.10.B(2) to provide greater clarity that any specific AELs established by rules, regulations, or permits not yet incorporated into the SIP and applicable to startups and/or shutdowns would not replace any existing SIP emission limit for those periods of operation unless and until the AELs were approved into the SIP. Specifically, Rule 1.10.B(2)(d) provides, “Following permit issuance, the emission limitations or work practice standards are considered State-only requirements until they have been adopted into [Rule 1.10] and approved by the EPA into the SIP.” In this way, Rule 1.10.B(2) operates in conjunction with B(1) to explain what must happen in the context of providing alternatives to existing SIP emission limits.

b. Rule 1.10.B(2) Should Not Only Consider a Source’s Existing Control Strategy

Comment 2: Among factors MDEQ will consider in possibly establishing AELs for periods of startups and/or shutdowns, Rule 1.10.B(2)(a) provides, “The source must demonstrate that it is technically infeasible, considering its specific control strategy, to comply with existing SIP emission limitations during startups and shutdowns.” The commenter argues that the phrase “considering its specific control strategy” creates an “illogical loophole that would allow sources with pollution controls that are outdated, undersized, not well maintained, not operated properly, or otherwise inadequate to claim technical infeasibility based on their controls, even though

those sources, if properly designed, operated, and/or maintained, could comply with applicable SIP emission limits.”

The commenter points to EPA’s statement in the 2015 SSM SIP Action that “alternative requirements applicable to the source during startup and shutdown should . . . take into account considerations such as . . . the control technology that is feasible during startup and shutdown.” *See* 80 FR 33839, 33980 (June 12, 2015). The commenter states that EPA should conditionally approve the SIP revision pursuant to CAA section 110(k)(4), requiring Mississippi to submit, within one year of the effective date of the final conditional approval, a corrective SIP submission to remove the phrase “considering its specific control strategy.”

Response 2: EPA disagrees that Rule 1.10.B(2)(a) is not approvable as transmitted in the November 17, 2016, SIP submittal. Consideration of a specific control strategy is consistent with EPA guidance in the 2015 SSM SIP Action. Mississippi’s SIP requires that any potential AELs “be narrowly tailored and take into account considerations such as the technological limitations of the specific source category and the control technology that is feasible during startup and shutdown” as recommended by EPA. *See* 80 FR 33839, 33980. EPA’s restatement of the 1999 SSM Guidance in the 2015 SSM SIP Action includes the following two (of seven total) criteria recommended for developing a SIP revision with potential AELs: “(1) The revision is limited to specific, narrowly defined source categories using specific control strategies (e.g., cogeneration facilities burning natural gas and using selective catalytic reduction); (2) Use of the control strategy for this source category is technically infeasible during startup or shutdown periods.” *Id.* Mississippi Rule 1.10.B(2) is consistent with these criteria, requiring at B(2)(c) that the AELs must be specific to the source and its particular control strategy, which EPA interprets as the control strategy that corresponds to the relevant narrowly defined source category (e.g., cogeneration facilities burning natural gas and using selective catalytic reduction), and requiring at B(2)(a) a demonstration that the control strategy is technically infeasible during startup and shutdown periods.

Additionally, EPA does not agree that the language at Rule 1.10.B(2)(a), or EPA's language in the 2015 SSM Action or the 1999 SSM Guidance, would necessarily limit such a demonstration to considering existing controls only. Rule 1.10.B(2)(a) makes no reference to actual installed equipment. This rule requires the source to demonstrate that its strategy for emissions control is not capable of achieving compliance during startup and shutdown, and such demonstration should be made based on an assumption of properly designed and maintained equipment as well as the control strategy's suitability for the narrowly defined source category.

Moreover, EPA and the public will have an opportunity to evaluate any specific AELs, as they will be submitted as source-specific SIP revisions to act as alternatives to SIP emission limits. The record supporting any such AELs would show how the criteria at Rule 1.10.B(2) were satisfied.

c. Numerical Emission Limits vs. Work Practice Standards

Comment 3: The commenter states that EPA should clarify in its rulemaking record that “even for those sources (if any) that truly cannot meet normal limits during startup and shutdown, Rule 1.10.B(2) should in most cases establish alternative numerical limits, rather than allow for work practices.” The commenter references the 2015 SSM Action, 80 FR 33839, 33980, where EPA states: “In cases in which measurement of emissions during startup and/or shutdown is not reasonably feasible, it may be appropriate for an emission limitation to include as a component a control for startup and/or shutdown periods other than a numerically expressed emission limitation.” The commenter asserts that under EPA's guidance, work practice standards are only appropriate during those periods where emissions cannot be measured. The commenter also states that EPA's approval should include the guidance that numerical limits are preferable to work practice standards because they are the “most legally and practicably enforceable SIP requirements,” and cites to the 2015 SSM SIP Action, 80 FR 33839, 33974–75. The commenter goes on to state that for situations in which a work practice is appropriate, EPA should advise that pollution control equipment should be operated while fuel-burning equipment

are burning primary fuels or when power plants are generating electricity, and that the SIP should require clean fuels to be burned until the point at which the pollution controls are engaged.

Response 3: EPA does not believe clarification is necessary regarding a preference for numerical emission limits versus work practice standards. In this action, EPA is evaluating the November 17, 2016, SIP revision in light of the 2015 SSM SIP Action. Rule 1.10.B(2) states that, where a source is unable to comply with an existing SIP emission limit, MDEQ will consider establishing “source specific emission limitations or work practice standards for startups and shutdowns” as alternatives to those SIP limits. As outlined in the June 7, 2022, NPRM, Rule 1.10.B(2) goes on to specify criteria that EPA believes to be appropriate in considering establishing either a numerical emission limit or a work practice standard to apply as an AEL. Provisions 1.10.B(2)(a)–(d) are consistent with the guidance criteria EPA has established for setting AELs, as discussed in the same section of the 2015 SSM SIP Action cited by the commenter.^{3,4}

As EPA notes in the 2015 SSM SIP Action, SIP emission limitations “(i) do not need to be numerical in format; (ii) do not have to apply the same limitation (e.g., numerical level) at all times; and (iii) may be composed of a combination of numerical limitations, specific technological control requirements and/or work practice requirements, with each component of the emission limitation applicable during a defined mode of source operation.” *See* 80 FR 33839, 33889. Therefore, if MDEQ establishes AELs comprised of work practice standards in some part, pursuant to Rule 1.10.B(2), the emission limit overall “must be continuous, must meet applicable CAA stringency requirements, and must be legally and practically enforceable.” *Id.* Moreover, EPA and the public will have an opportunity to evaluate any specific AELs, as they

³ *See* Memorandum to EPA Regional Administrators, Regions I-X from Steven A. Herman and Robert Perciasepe, USEPA, “State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown” (September 20, 1999). This is referred to as the 1999 SSM Guidance.

⁴ *See* 80 FR 33839, 33980 (June 12, 2015).

will be submitted as source-specific SIP revisions to act as alternatives to SIP emission limits. At that time, EPA can evaluate the AELs in consideration of the criteria established in the SIP and the guidance referenced above.

Next, in the 2015 SSM SIP Action, EPA noted that “there *may be* sources for which a numerically expressed emission limitation is the most legally and practically enforceable,” (emphasis added) and that “there are many sources for which a numerically expressed emission limitation will be the most appropriate and will result in the most legally and practically enforceable SIP requirements. However, ... for some source categories, under some circumstances, it may be appropriate for the SIP emission limitation to include a specific technological control requirement or specific work practice requirement that applies during specified modes of source operation such as startup and shutdown.” *See id.* at 33974–75. Therefore, EPA disagrees that the approval of the November 17, 2016, SIP revision must include any additional guidance regarding a preference for numerical emission limits versus work practice standards.

Additionally, EPA does not agree with the commenter’s conclusion that the 2015 SSM SIP Action and EPA guidance would only find work practice standards appropriate when emissions measurements cannot be made during startup and/or shutdown. While the language referenced by the commenter suggests that work practice standards may be appropriate in cases in which measurement of emissions during startup or shutdown is not reasonably feasible, EPA does not assert that this is the only circumstance in which work practice standards may be utilized as part of a continuous emission limitation. Thus, EPA believes that a work practice standard could be a sufficient AEL in various other circumstances. The 2015 SSM SIP Action notes, for example, regarding sources of sulfur dioxide (SO₂), “if the otherwise applicable numerical SO₂ emission limitation in the SIP is not achievable, and the otherwise required SO₂ control measure is not effective during startup and shutdown and/or measurement of emissions during startup and shutdown is not reasonably feasible, then it may be appropriate for that

emission limitation to impose a different control measure, such as use of low sulfur coal, applicable during defined periods of startup and shutdown in lieu of a numerically expressed emission limitation.” *See* 80 FR 33839, 33975.

The 2015 SSM SIP Action goes on to discuss instances of where the Agency has established work practice standards as components of emission limits that are consistent with the definition of “emission limitation” or “emission standard” at CAA section 302(k), such as 40 CFR part 63, subpart UUUUU, *National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units*, and 40 CFR part 60, subpart Da, *Standards of Performance for Electric Utility Steam Generating Units*. *See id.* at 33891. These examples are rules which require use of continuous emission monitoring systems, so measurement during periods of startup and/or shutdown would not necessarily be infeasible, and yet EPA chose to establish work practice standards as components of the emission limits applicable to these sources. For the reasons stated above, EPA believes that Mississippi’s November 17, 2016, SIP revision adequately addresses situations for which AELs may need to be established and appropriately notes that the AELs can take the form of a numerical emission limit or some work practice standard.

Finally, regarding potential work practice standards for fuel-burning equipment, EPA does not find it appropriate to speculate on any specific work practice requirements in absence of specific information on the source or source category. However, EPA notes that the Agency indicated regulations and technical materials supporting the NSPS and NESHAP could be helpful in developing emission limits or AELs and that definitions of startup and shutdown and work practices for those periods could be appropriate for incorporation into a SIP. *See* 80 FR 33839, 33980. Several of the suggestions for fuel-burning equipment made by the commenter are included in the NSPS and NESHAP, indicating that these could be appropriate components of work practice standards.⁵ So, although some of the suggestions made by the commenter could

⁵ *See, e.g.*, 40 CFR 60.42Da(e)(1)(ii), 40 CFR 63.7500, 40 CFR 63.9991(a)(1).

be reasonable depending on the specific circumstances, they are not relevant to this action; EPA will address the contents of any proposed work practice standards in the source-specific SIP revisions that Mississippi submits to EPA for approval and incorporation into the SIP.

d. Reporting of Compliance with Work Practice Standards

Comment 4: The commenter states that Rule 1.10.B(2)(c)(iv) requires sources “only to document startup and shutdown events in contemporaneous logs and does not require sources to report to the MDEQ any information to assure that sources are complying with the requirements of the rule.” The commenter asserts that, as written, any work practice standards would not be practically enforceable by MDEQ, EPA, or citizens, and therefore, would not comply with CAA section 110(a)(2)(A). The commenter goes on to recommend that EPA advise Mississippi that if work practices are selected for any sources, that MDEQ should “require the work-practice compliance information from the proposed rule to be reported by sources through, at the least, their quarterly Title V compliance reports.”⁶

Response 4: EPA disagrees that it is necessary to advise Mississippi regarding the reporting of work practice compliance information. CAA section 110(a)(2)(C) provides that the SIP shall include a program to provide for the enforcement of the measures described in section 110(a)(2)(A), including a permit program to regulate the construction and modification of stationary sources. Therefore, the permitting process can establish the means by which an emission limitation is enforceable, including recordkeeping and reporting requirements, particularly in the case of source-specific emission limits submitted for inclusion in the SIP. Generally, Rule 1.10.B(2)(d) provides that any source-specific emission limitations or work practice standards intended as an alternative to existing SIP emission limits must be established in a permit issued pursuant to 11 MAC Part 2, Chapter 2, and then submitted to EPA for incorporation into the SIP. MDEQ’s Rule 2.2, *General Standards Applicable to All Permits*, and

⁶ The commenter refers to quarterly title V compliance reports. EPA believes the commenter is referring to the requirement at 40 CFR 70.6(a)(3)(iii)(A) requiring the submittal of reports of any required monitoring at least every 6 months, i.e., semiannually.

Rule 2.9, *Recordkeeping and Reporting*, provide that the permit board in Mississippi has the authority to establish requirements for determining compliance with applicable requirements, including recordkeeping and reporting of necessary monitoring. EPA will review these permit conditions as part of any source-specific SIP revision and evaluate the adequacy of the AELs (including the practicable enforceability of any applicable work practice standards) pursuant to the CAA and EPA guidance.

Additionally, for any major sources, facilities will also be subject to semiannual reporting, which would outline any deviations from permit requirements, and annual certification, pursuant to EPA's title V regulations at 40 CFR part 70 and Mississippi's federally approved title V program at 11 MAC Part 2, Chapter 6, *Air Emissions Operating Permit Regulations for Purposes of Title V of the Federal Clean Air Act*.⁷ These reporting requirements would include the information needed for determining compliance with any applicable source-specific work practices standards, including those that may be approved into the SIP. For example, 11 MAC Part 2, Chapter 2, Rule 6.3(C)(5) provides requirements for a "compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices," consistent with 40 CFR 70.6(c)(5).

Furthermore, as stated in the NPRM, EPA considers the requirements of Rule 1.10.B(2) to be consistent with the seven criteria EPA has recommended for the development of AELs and that this provision is sufficient to guide the development of specific AELs. In the 2015 SSM SIP Action, EPA recommended that "to be approvable (*i.e.*, meet CAA requirements)" an AEL should be developed with seven specific criteria, including that it "requires that the owner or operator's actions during startup and shutdown periods are documented by properly signed, contemporaneous operating logs or other relevant evidence."⁸ Mississippi's Rule

⁷ See, e.g., 40 CFR 70.6(a)(3)(iii)(A) and (c)(5), 11 MAC Part 2, Chapter 6, Rule 6.3(A)(3)(c)(1), and 11 MAC Part 2, Chapter 6, Rule 6.3(C)(5).

⁸ See also the 1999 SSM Guidance.

1.10.B(2)(c)(iv) fulfills that recommendation by providing that “the source must document all startups and shutdowns using properly signed contemporaneous logs or other relevant evidence.”

e. Definitions of Startup and Shutdown

Comment 5: The commenter states that EPA should require Mississippi to more narrowly define “startup” and “shutdown” in Rule 1.2, *Definitions*. The commenter asserts that these definitions are vague and would allow for unlimited periods of startup or shutdown. As an example, the commenter claims that the term “operation,” as used in the definitions of these two terms, is ambiguous. The commenter states that the terms must be specific and narrowly tailored, citing to a section of EPA’s 2015 SSM SIP Action that addresses the seven criteria EPA developed in the 1999 SSM Guidance and clarified in the 2015 SSM SIP Action, for approval of alternative emissions limits. The commenter then claims that it is preferable that “startup” be defined as beginning when primary fuel-burning sources start burning their primary fuel, and “shutdown” be defined as beginning when fuel-burning sources stop burning their primary fuel. The commenter closes by stating that CAA section 110(a)(2) would be violated if these definitions are not properly bounded.

Response 5: EPA disagrees that the Agency should require Mississippi to more narrowly define the terms “startup” and “shutdown” in its general definitions rule as part of this rulemaking. First, Rule 1.2, *Definitions*, is not part of the SIP call in EPA’s 2015 SSM Action and is not part of the SIP revision before EPA for consideration in this rulemaking.

Second, Mississippi’s definitions of startup and shutdown are consistent with the definitions used in the 2015 SSM SIP Action and are not inconsistent with 40 CFR part 51, which does not define these terms.^{9,10} Mississippi’s definitions and those used in the 2015 SSM

⁹ Mississippi defines “startup” at Rule 1.2.HH as, “[t]he bringing into operation from a non-operative condition. Relative to fuel-burning equipment, a startup shall be construed to occur only when a unit is taken from a non-fired to a fired state.” The 2015 SSM SIP Action defines “startup” as “generally, the setting in operation of a source for any reason. In this document, the EPA uses this term in the generic sense. In an individual SIP provision it may be appropriate to include a specifically tailored definition of this term to address a particular source category for a particular purpose.”

¹⁰ Mississippi defines “shutdown” at Rule 1.2.CC as, “[t]he termination of operation of equipment. Relative to fuel-burning equipment, a shutdown shall be construed to occur only when a unit is taken from a fired to a non-fired

SIP Action are designed to generally convey what these modes of operation consist of and when they begin. As noted in the 2015 SSM Action, it may be appropriate in individual SIP provisions to include a specifically tailored definition to address a particular source category for a particular purpose. However, EPA does not believe that Mississippi's definitions need to be further tailored because emission limits now apply during startup and shutdown periods, and sources must comply with those limits during startup and shutdown periods unless an AEL is approved. Presently, there are no specific AELs approved for periods of startup or shutdown in the SIP, and therefore, there are no current concerns about unlimited periods of startups or shutdowns.

Third, any future AELs will need to adequately define the modes of operation during which the AELs apply. The requirements of Rule 1.10.B(2) are consistent with the seven criteria EPA has recommended for the development of AELs – including the third criteria regarding minimizing the frequency and duration of startup and shutdown modes¹¹ – and this rule is sufficient to guide the development of specific AELs. Specifically, Rule 1.10.B(2)(c)(i) states: “the source must limit the frequency and duration of startups and shutdowns to the greatest extent practicable.” Thus, MDEQ will establish the necessary requirements specific to the source in the permit or rule, including the boundaries of the startup and shutdown periods during which the AELs will apply. Subsequently, those conditions will be reviewed by EPA and the public through EPA's proposed action to approve or disapprove the source-specific AELs replacing any applicable SIP emission limits for startups and/or shutdowns. EPA will review the contents of any source-specific SIP revision and evaluate the adequacy of the AELs (including the startup and shutdown parameters) pursuant to the CAA and EPA guidance.

state.” The 2015 SSM SIP Action defines “shutdown” as “generally, the cessation of operation of a source for any reason. In this document, the EPA uses this term in the generic sense. In individual SIP provisions it may be appropriate to include a specifically tailored definition of this term to address a particular source category for a particular purpose.”

¹¹ The third criteria states, “[t]he alternative emission limitation requires that the frequency and duration of operation in startup or shutdown mode are minimized to the greatest extent practicable.” *See* 80 FR 33839, 33980.

Therefore, EPA disagrees that Mississippi must revise its current SIP-approved definitions of “startup” and “shutdown” included in Rule 1.2 and that these definitions are inconsistent with the CAA.

f. Clarification of State-Only versus SIP-Approved Requirements

Comment 6: Regarding MDEQ’s revised rules at Rule 1.10.B generally, the commenter states that “EPA should advise Mississippi that it should help provide clarity for the public and regulated entities by including notes or parenthetical information in its published regulations about which requirements are state-only and which are SIP-approved.”

Response 6: EPA notes that this action clearly delineates which portions of Rule 1.10 are not approved into the SIP, including notation at 40 CFR 52.1270(c), and will ultimately also be reflected in the compilation of approved Mississippi rules available at EPA’s website.¹² Regarding any further notation that MDEQ may elect to include in the portions of the rules which are state-only, EPA has no authority to prescribe such alterations of the text. Therefore, this comment is outside the scope of this action.

III. Final Action

EPA is approving Mississippi’s November 17, 2016, SIP submission revising Rule 1.10.B, *Startups and Shutdowns*, and requesting removal of Rule 1.10.A, *Upsets*, Rule 1.10.B(3), and Rule 1.10.C, *Maintenance*, from the Mississippi SIP-approved version of Rule 1.10, *Provisions for Upsets, Startups, and Shutdowns*. EPA has also determined that this SIP revision corrects the deficiency identified in the 2015 SSM SIP Action. Mississippi is retaining Rules 1.10.A and Rule 1.10.B(3) for state law purposes only, with changes to clarify that the upset provisions of Rule 1.10.A apply to enforcement actions by the State (specifically, the Mississippi

¹² This website is located at <https://www.epa.gov/sips-ms/epa-approved-statutes-and-regulations-mississippi-sip>. It is a sub-site of the website titled “Approved Air Quality Implementation Plans in Mississippi,” located at <https://www.epa.gov/sips-ms>, which is a sub-site of the website titled “Approved Air Quality Implementation Plans in Region 4,” located at <https://www.epa.gov/air-quality-implementation-plans/approved-air-quality-implementation-plans-region-4>.

Commission on Environmental Quality) only and “are not intended to prohibit EPA or third-party enforcement actions.”¹³ *See* 87 FR 34609.

IV. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, as discussed in Sections I and II of this preamble, EPA is finalizing the incorporation by reference of 11 Mississippi Administrative Code, Part 2, Chapter 1, Rule 1.10, *Provisions for Upsets, Startups, and Shutdowns*, state effective December 10, 2016, except for Rule 1.10.A and 1.10.B(3), which MDEQ is not requesting EPA to incorporate into the SIP. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference in the next update to the SIP compilation.¹⁴

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

¹³ Additionally, the existing Rule 1.10.B(3) is being removed from the SIP as requested, and the revised Rule 1.10.B(3) is not being requested for SIP approval, as the revised provision simply provides that “upset” provisions at Rule 1.10.A apply if an upset occurs during periods of startup and shutdown.

¹⁴ *See* 62 FR 27968 (May 22, 1997).

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175

(65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 10, 2022.

Daniel Blackman,
Regional Administrator,
Region 4.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart Z - Mississippi

2. In § 52.1270(c), amend the table by revising the entry for “Rule 1.10,” under the center heading “11 MAC Part 2 - Chapter 1 Air Emission Regulations for the Prevention, Abatement, and Control of Air Contaminants,” to read as follows:

§ 52.1270 Identification of plan.

* * * * *

(c) * * *

EPA-Approved Mississippi Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation
**	**	*	*	*
11 MAC Part 2 - Chapter 1 Air Emission Regulations for the Prevention, Abatement, and Control of Air Contaminants				
**	**	*	*	*
Rule 1.10	Provisions for Upsets, Startups, and Shutdowns	12/10/2016	[Insert date of publication in Federal Register], [Insert citation of publication]	Except for Rule 1.10.A and 1.10.B(3)
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